

Waivers	First Name	Last Name	Claim Number
			W-14-0012
Amount	OGC Received Date	Assigned To	Assigned Date
\$1331.00	08/08/2014	Richard Feldman	08/12/2014
EPA Decision	EPA Decision Date	Amount Approved	Status
DENIED	08/28/2014	CLOSED	
Appeal	Comments		
No			

This email is in response to your "Waiver/Remission of Indebtedness Application" dated April 28, 2014, wherein you request approval of a waiver for a gross amount of \$1,331.07. On August 8, 2014, Leonice Stewart in Office of the Chief Financial Officer forwarded your request to me as the Claims Officer for EPA. For the reasons set forth herein, your request for waiver is denied.

Briefly stated, you retired from federal service at EPA in April 2011. Shortly thereafter, in August 2011, EPA hired you on a part-time basis as a reemployed annuitant. As a reemployed annuitant, you were hired pursuant to the authority of the 2010 National Defense Authorization Act (NDAA) whereby you received a federal salary commensurate with the number of hours worked without an offset by the amount of your retirement annuity. Therefore, because of the so-called "dual compensation waiver" or salary offset waiver, you were able to receive your full pension and salary (for part-time work) while working at EPA. The dispute involved in your request for waiver covers the pay periods ending September 7, 2013 and Sept. 21, 2013. You agree that you owe the remainder of the debt amount of \$4,009.87 covering subsequent pay periods in October and November 2013. The amount of the debt for which you seek a waiver is \$1,331.07.

Under 5 U.S.C. § 5584, I have the authority to waive collection of erroneous payments of pay or allowances if collection would be against equity and good conscience and not in the best interest of the United States, provided there is no indication of fraud, fault, misrepresentation, or lack of good faith on the part of the employee. Waiver is precluded if the employee is aware or should have been aware that he or she was being overpaid. B-226147. June 2, 1987. In the present case, I find that the erroneous payments in this instance were caused by -----agency error. Therefore, the only issue before me is whether you have established a sufficient basis for me to conclude that the collection of the \$1,331.07 debt should be waived.

Analysis

You began working at EPA in 2011 as a reemployed annuitant apparently

under the impression that your temporary appointment of one year could be extended for up to two additional years. You allege that EPA personnel have now misinterpreted the length of the NDAA temporary hiring authority to be for only two years and, as a result, terminated your appointment as of September 20, 2013. This termination had the effect of removing the salary offset waiver and, consequently, caused the overpayments to arise for the two pay periods at issue.

You began your time as a reemployed annuitant on August 27, 2011, and at the end of that period, your temporary appointment was continued for another year until August 27, 2013. As a result, you received a salary offset-waiver for the second year of your appointment. Apparently, in the spring of 2013, EPA personnel asked your supervisor to extend this time period for another year, which he agreed to do. During the week of September 15, 2013, however, Human Resources-Las Vegas advised your supervisor that your appointment could not be extended for another year under the NDAA. Your appointment was terminated September 20, 2013.

A Human Resources Bulletin (HR Bulletin) set forth the hiring policy for NDAA and the salary offset-waiver. The HR Bulletin provides in section IX. (a)(2) that "Hours worked by any annuitant reemployed under [the NDAA] are limited to 520 during the first six months of retirement, 1040 during any twelve month period, 3120 for total hours worked during any period." You maintain that these hourly limits equate to a total of three years during which a reemployed annuitant may work. You arrive at three years by using a "normal 40 hour work week, this amounts to no more than 20 hours per week for not more than 3 years (1040 hours/52 weeks 20 hours/week; 3120 hours/20 hours 156 weeks, or 3 years)." You believe, therefore that, despite the HR notice to your supervisor during the week of Sept. 15, 2013, you are entitled to receive a salary offset waiver for the covered pay periods in September.

I find that your interpretation is a strained reading of the Bulletin and that the Bulletin cannot fairly be read in this manner. First, the 520 hours during the first six months could just as easily be read to translate into thirteen weeks during the first six months at 40 hours per week, and the limit of 1040 hours during any twelve month period to 40 hours per week for 26 weeks. Thus, if a reemployed annuitant worked 40 hours per week for 26 weeks during a twelve month period, he/she could work full time or 2080 hours during year two.

Moreover, the terms of the Bulletin could only be read to mean that the authority to provide a salary offset waiver was limited to an initial appointment "not to exceed" one year plus incremental employment for a second year. A reemployed annuitant could work for an initial year period

and a second year period in increments limited to the stated hourly limits. This interpretation is the only reasonable interpretation. Immediately above section IX. (a)(2) in section X. (a)(1) the Bulletin states” [a]n annuitant is appointed under a temporary appointment. The initial appointment is not to exceed one year. The appointment may be extended in increments of up to one additional year for a maximum of two years.” (Emphasis supplied.) The Bulletin in section V.a. defines “temporary appointment” as “an appointment not to exceed one year. The appointment may be extended for up to one additional year for a maximum of two years.” Thus, when read as a whole, the Bulletin limited the temporary appointment, for which a reemployed annuitant could receive a salary offset waiver to a total of two years, which could be worked in increments.

You worked as a reemployed annuitant, receiving a salary offset waiver for two years, August 27, 2011-August 27, 2013. In light of the fact that the Bulletin expressly states that the term of the initial appointment and any subsequent appointment is limited to two years total, it was reasonable for HR-Las Vegas to question an extension for a third year the week of September 15, 2013 and then terminate your appointment. You should not have relied on your interpretation of the Bulletin without inquiring as to its applicability to a third year. Thus, when HR notified your supervisor the week of September 15, you became aware that the salary offset waiver had to cease. Once HR notified your supervisor, you should not have expected to realize a salary offset waiver at the end of your two year employment period-August 27, 2013.

The request for waiver is denied. I sincerely regret a more favorable reply cannot be made. I do realize that this overpayment and administrative delay in correcting the error has created an inconvenience for you. Under 40 C.F.R. §13.11(c) (iii), I have the delegated authority to waive all or part of the interest, penalty, and administrative charges which have accrued on this debt. In this regard, any portion of the debt that will be collected attributable to interest, penalty, and administrative charges is hereby waived.

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Type

Re-employed Annuitant

Attachments